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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte J. AARON BLY, DAVID P. FRANCIS, JOHN M. MELBY,
PATRICK O'BRIEN, RYAN J. SHERMAN,
ANDREW F. SUHY JR., and BRENT PARENT

Appeal 2008-0006
Application 09/714,702
Technology Center 3600

Decided:¹ February 27, 2009

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and DAVID B.
WALKER, *Administrative Patent Judges*.

WALKER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

¹The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

The Appellants seek our review of the Examiner's final rejection of claims 1-25 under 35 U.S.C. § 134 (2002). We have jurisdiction under 35 U.S.C. § 6(b) (2002). We affirm-in-part.

Appellants claim systems for tracking and managing physical assets to promote efficient management of the assets while reducing cost. More specifically, the Appellants claim a computer based system for automatically gathering, analyzing, and delivering information relating to the maintenance of a plurality of such assets, such as a fleet of industrial equipment, to maximize productivity and to reduce the operating costs and administrative burdens associated with such assets (Specification 1:14-19). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A system for gathering and analyzing data relating to a non-fixed movable asset comprising:

 a local controller located at a first location for acquiring data that is representative of at least one operating characteristic of the asset;

 an analysis controller located at a second location that is responsive to said acquired data from said local controller, wherein said analysis controller provides for generating a preventative maintenance determination from said acquired data and at least one historical characteristic relating to said asset;

 an electronic communications network connected between said local controller and said analysis controller, said electronic communications network permitting transmission of said acquired data from said local controller to said analysis controller;

 a hand held device receiving at least a subset of said acquired data stored in said analysis controller; and

wherein said hand held device is not said
local controller.

THE REJECTIONS²

The Examiner relies upon the following as evidence in support of the rejection:

Koether	US 5,875,430	Feb. 23, 1999
Heagle	US 5,900,801	May 4, 1999
Mabuchi	US 6,417,760 B1	Jul. 9, 2002

1. Claims 1-5, 7-11, 16-18, and 21-24 are rejected under 35 U.S.C. § 102(e) as anticipated by Koether.
2. Claims 6 and 25 are rejected under 35 U.S.C. § 103(a) as unpatentable over Koether.
3. Claims 12-15 and 19-20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Koether in view of Heagle and Mabuchi.

ISSUES

The issues before us are whether the Appellants have shown that the Examiner erred in issuing each of the above rejections. The anticipation rejection and the obviousness rejection over Koether alone turn on whether Koether teaches (1) generating a preventative maintenance determination

² In the final rejection, the Examiner rejected claims 5 and 7 under 35 U.S.C. 103(a) as unpatentable over Koether. In the Answer, he stated that the Examiner erred and should have rejected claims 5 and 7 under 35 U.S.C. § 102(e) as anticipated by Koether. In the Reply Brief, the Appellants treated claim 5 as though it was rejected under §102 and requested to maintain the appeal. The Appellants did not address claim 7 in the Reply Brief. We will treat the rejections of claim 5 and 7 as standing under 35 U.S.C. § 102(e) as anticipated by Koether.

from said acquired data and at least one historical characteristic relating to said asset; (2) a hand held device that is in direct contact with an analysis controller; (3) a second computer system disposed between said analysis controller and said hand held device; (4) a data base that includes a best practice level or past historical data to provide a base point for comparison with said collected data; (5) user data representing a user accessing an asset; (6) a hand held device including a form, said form providing at least a subset of said data values for the entry of foundational data; and (7) forms providing data values for the entry of foundational data associated with said data values, said data values and said foundational data being transmitted to said analysis controller.

The obviousness rejection over the combination of Koether, Heagle, and Mabuchi turns on whether the references are properly combined and, when combined, whether the combination teaches (1) an analysis of user training or user certification with respect to a class of assets; (2) an authorization subsystem including an asset access mechanism to receive said user identification from a data transmission point associated with the asset; and (3) a comparison of user identification.

FINDINGS OF FACT

We find the following enumerated findings to be supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Koether is directed to a cooking computer communication system for monitoring and controlling the activities of commercial kitchen

- or restaurant appliances through bi-directional communication between such appliances and a control center (Koether, col. 1, ll. 13-18).
2. Koether teaches that the control center may effect preventive maintenance even when there is no malfunction reported. Scheduled preventive maintenances are stored in a database. Alternatively, each base station may request preventive maintenance for its associated kitchen appliance(s) (Koether, col. 8, ll. 30-38).
 3. Koether also teaches that, in a preferred embodiment, the control center analyzes diagnostics information transmitted periodically by the appliance to determine whether to disable the appliance or to modify the cooking profiles stored in the appliance. The diagnostic information may include, but is not limited to, last repair date, next maintenance date, type of malfunction, statistical cooking data such as hours of operation, and cooking profiles (Koether, col. 9, ll. 7-48).
 4. Koether teaches that based on information transmitted to control center 170, a repair person may be dispatched to the site of the kitchen appliance requiring service or preventive maintenance (Koether, col. 9, ll. 61-64).
 5. The Specification teaches that one analysis tool may use a set of rules to estimate the total life of an asset under the circumstances currently in place at a business and compare them to known “best practices” for the same asset along with proposed process changes

to increase asset life to reach the “best practices” level
(Specification, 33:17-20).

6. Heagle is directed to a universal system for monitoring and controlling a plurality of individual food establishment monitoring and controlling systems for a plurality of remotely located, separate food establishments (Heagle, Abstract).

PRINCIPLES OF LAW

We determine the scope of the claims in patent applications “not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (*quoting In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)). We must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *See Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) (“Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.”). The challenge is to interpret claims in view of the specification without unnecessarily importing limitations from the specification into the claims. *See E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of ordinary skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court held that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in

the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *Id.* at 1445. *See also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445; *Piasecki*, 745 F.2d at 1472.

ANALYSIS

Rejection of claims 1-11, 16-18, and 21-24 under 35 U.S.C. § 102(e) as anticipated by Koether.

The Appellants argue claims 1, 8, 18, and 21-25 as a group (Br. 5). We treat claim 1 as representative.

The Appellants argue that Koether does not disclose generating “a preventative maintenance determination from said acquired data and at least one historical characteristic relating to said asset” (Br. 7). The Examiner found that

Koether teaches three types of preventative maintenance. Koether discloses scheduled preventative maintenance and preventative

maintenance requested by an appliance ('430, column 8, lines 30-38). Koether also teaches preventative maintenance determined by diagnostic information transmitted to a control center ('430, column 9, lines 60-63). Specifically, Koether teaches a control center computer ('430, figures 1 and 3) receiving diagnostic data (i.e.,] acquired data) ('430, column 9, lines 5-60) from local controller ('430, figures 1-3 and 8) and storing this acquired data in a control center computer database ('430, figures 1 and 3) along with previously stored acquired data (i.e.,] at least one historical characteristic) ('430, column 9, lines 6-45). The control center computer then "based on information transmitted to control center [170], a repair person may be dispatched to the site of the kitchen appliance requiring service or preventative maintenance" ('430, column 9, lines 60-63). Therefore, Koether teaches generating a preventative maintenance determination from said acquired data and at least one historical characteristic relating to said asset".

(Answer 10).

The Appellants respond by arguing that Koether teaches at most storing maintenance history to provide human beings with the ability to access the information at a later time (Reply Br. 4, citing e.g., Koether, col. 11, ll. 36-46). According to the Appellants, the Examiner has not explained in any Office Action or the Examiner's answer how this teaching reads on Appellants' claims, which recite that acquired data and historical data are used in a dynamic fashion to schedule future maintenance (Reply Br. 4). The Appellants further argue that, assuming arguendo that Koether does teach storing maintenance history data, nowhere does Koether teach or

suggest generating a preventive maintenance determination based on such data (Br. 5). We do not find this argument persuasive.

Independent claim 1 requires “said analysis controller provides for generating a preventative maintenance determination from said acquired data and at least one historical characteristic relating to said asset.” Koether teaches that based on information transmitted to the control center, a repair person may be dispatched to the site of the kitchen appliance requiring service or preventive maintenance (Finding of Fact 4). The diagnostic information may include, but is not limited to, last repair date, next maintenance date, type of malfunction, and statistical cooking data such as hours of operation (Finding of Fact 3), which meet the limitation of at least one historical characteristic relating to said asset. The Appellants thus have not shown that the Examiner erred in rejecting claims 1, 8, 18, and 21-25.

With respect to claim 2, the Appellants argue that Koether does not disclose a hand held device that is in direct contact with an analysis controller, because Koether teaches that the portable hand held terminal communicates with a control center indirectly through a kitchen base station and a data network (Br. 9; citing Koether, Figure 8, col. 10, ll. 23-25). The Examiner found that Koether teaches a handheld device in direct contact with the analysis controller (Answer 5, citing Koether, Figure 8, col. 10, l. 1 – col. 11, l. 29). The Examiner construes “direct contact” to be communication without the assistance of a “third party” or entity, or “middle man” (Answer 11). The Examiner’s interpretation seems consistent with a plain meaning of direct contact. See “direct.” *Dictionary.com Unabridged* (v 1.1). Random House, Inc. 21 Feb. 2009. <[Dictionary.com](http://dictionary.reference.com/browse/direct) <http://dictionary.reference.com/browse/direct>> (“without intervening

persons, influences, factors, etc.; immediate; personal: *direct contact with the voters; direct exposure to a disease*") and "contact." *Dictionary.com Unabridged* (v 1.1). Random House, Inc. 21 Feb. 2009. <[Dictionary.com http://dictionary.reference.com/browse/contact](http://dictionary.reference.com/browse/contact)> ("immediate proximity or association").

However, the Appellants are correct that Koether only teaches the hand held controller connecting to the control center via the kitchen base station. The Appellants argue that the kitchen base station of Koether performs no analysis and thus does not meet the limitation of an analysis controller (Br. 9). The Examiner found that Koether explicitly states that service personnel contact the control center computer in order to receive a sub-set of acquired data such as "maintenance history" or "prior repairs or malfunctions" (Answer 12, citing Koether, Figure 8, col. 11, ll. 30-46). The figure shows the hand held controller connecting to the control center via the kitchen base station and the cited passage does not teach connecting without the kitchen base station. The Examiner thus has failed to establish a prima facie case of anticipation as to claim 2.

With respect to claim 3, the Appellants argue that Koether does not disclose a second computer system disposed between said analysis controller and said hand held device (Br. 10). The Examiner found that Koether's control center comprises multiple "computer systems," including (1) a first system or analysis controller that receives operating characteristics of an appliance and makes a preventative maintenance determination (citing Koether, col. 8, ll. 39-56, col. 9, ll. 5-67) and (2) a second system that accesses the received operating characteristic data and transmits it along with selectively modified aspects of the acquired data (citing Koether, col. 8,

ll. 20-30). (Answer 12). The recited passages describe functions of the control center and kitchen base station, but do not teach that the control center comprises multiple computer systems including a second computer system disposed between said analysis controller and said hand held device. The Examiner thus has failed to establish a prima facie case of anticipation as to claim 3 and claim 4, which depends therefrom.

The Appellants argue claims 9 and 17 as a group. The Appellants argue that Koether does not disclose a data base that includes a best practice level or past historical data to provide a base point for comparison with said collected data (Br. 12). The Examiner found that Koether teaches storing repair instructions or a “best practice level” and provides such instructions to a service personnel to allow said personnel to repair an appliance by comparing the instructions with the appliance being serviced (Answer 13, citing Koether, col. 11, ll. 23-30). The Appellants respond by arguing that the Specification describes “best practices” as relating to rules for the treatment of an asset over its useful life which is not the same as simple repair instructions (Reply Br. 7, citing Specification 33:17-20). The passage cited by the Examiner mentions repair instructions, but makes no mention of best practices or including best practices in a database. The Examiner has not shown where Koether teaches this limitation. The Examiner thus has failed to establish a prima facie case of anticipation as to claims 9 and 17.

With respect to claim 10, the Appellants argue that Koether fails to disclose “user data representing a user accessing an asset” because any disclosure in Koether regarding user data or access information is limited to billing functionality and is not related to a user accessing an asset (Br. 12). The Examiner found that Koether teaches monitoring kitchen appliances in

use and therefore teaches collecting data that represents a user accessing an asset (Answer 14, citing Koether, col. 3, ll. 50-65; col. 4, ll. 60-67; col. 8, ll. 14-30; col. 8, l. 57 – col. 9, l. 3; col. 9, ll. 5-45; col. 11, ll. 53-61). The Appellants responded by arguing that Koether teaches updating information in a kitchen appliance “on a global basis” and more importantly does not teach or suggest collecting any data from kitchen appliances that are in any way associated with a particular user, much less collecting data “representing a user accessing an asset” as is required by claim 10 (Reply Br. 8). The Examiner’s cited passages refer to retail food service chains updating the cooking profiles of their food products on a global basis, but do not discuss user data representing a user accessing an asset. The Examiner thus has failed to establish a prima facie case of anticipation as to claim 10 and claim 11, which depends therefrom.

With respect to claims 5, 16, and 17, the Appellants argue that Koether fails to disclose “a hand held device including a form, said form providing at least a subset of said data values for the entry of foundational data” as required by claim 16 and “forms providing data values for the entry of foundational data associated with said data values, said data values and said foundational data being transmitted to said analysis controller” as required by claim 5. Specifically, the Appellants argue that the Specification clearly explains that “foundational data” is data about various attributes of an asset (Specification 34:13 – 35:19), and not billing or invoice data as the Examiner suggests at Answer 15 (Reply Br. 9). The passage of the Specification cited by the Appellants does not use the term “foundational data” and thus provides no lexicographic definition of the phrase. The Examiner found that Koether teaches service personnel preparing an invoice

utilizing hand-held devices that comprise standard billing and invoice formatting stored in memory and transmitting said prepared invoice to the analysis controller for storage (Answer 15, citing Koether, col. 10, l. 62 – col. 11, l. 1). The Appellants further argue that the Examiner's Answer wholly fails to address Appellants' argument that Koether makes no disclosure of a form providing at least a subset of said data values for the entry of foundational data or of foundational data being transmitted to said analysis controller and stored in said database (Br. 13, Reply Br. 9). We find that the Examiner has failed to explain how the cited teachings of Koether meet the disputed claim limitation. The Examiner thus has failed to establish a prima facie case of anticipation as to claims 5 and 16 and as to claims 6 and 17, which depend from claim 5 and 16, respectively.

With respect to claim 7, the Appellants argue that the Final Office Action fails to point to any disclosure in Koether or to any other basis as to why claim 7 is obvious over Koether (Br. 15). The Examiner found that claim 7 should have been rejected under 102(e), because Koether explicitly teaches that service personnel receive via a hand-held terminal parts data in the form of at least one of inventory, inventory location, and a parts catalog. According to the Examiner, Koether recites service personnel ascertaining the availability of parts for a particular appliance (Answer 15, citing Koether, col. 11, ll. 10-14). The Appellants do not contest the Examiner's citation to Koether in the Answer. The Appellants have not shown that the Examiner erred in rejecting claim 7 as anticipated by Koether.

Rejection of claims 6 and 25 under 35 U.S.C. §103(a) as unpatentable over Koether.

The Appellants make no separate arguments as to the patentability of claims 6 and 25, apart from those made with respect to the claims on which they depend. Those arguments are equally unpersuasive here. The Appellants have not shown that the Examiner erred in rejecting claims 6 and 25 as unpatentable over Koether.

Rejection of Claims 12-15 and 19-20 under 35 U.S.C. § 103(a) as unpatentable over Koether in view of Heagle and Mabuchi.

The Appellants argue that the cited references do not affirmatively suggest their combination and teach away from such combination (Br. 18). According to the Appellants, Heagle teaches away from combination with Mabuchi because its principal motive is to maintain control of the food processing methods and employee involvement in this process ensuring compliance with food service guidelines, while Mabuchi's monitoring of industrial plants for safety purposes has nothing to do with food processing (Br. 18).

The Examiner provided the following articulated reasoning in support of the combination:

The Mabuchi et al. alarm system is an obvious modification of the Koether and Heagle et al. combination as it allows food establishment owners to enforce, for example, HACCP or even more stringent food safety guidelines ('801, column/line 12/24-13/20) by preventing untrained or "uncertified" (i.e.[.] workers who have engaged in unsanitary activities) workers from accessing a kitchen (i.e.[.] class of assets), which necessarily

would prevent said worker from using specific appliances (i.e.[.] asset) and thus potentially contaminating a food-handling environment ('760, figures 4, 22 and 23; column 21, lines 10-28 and 45-53; column 22, lines 34-52). Further, as Mabuchi et al. teach a subsystem ('760, figure 19) that includes an asset access mechanism for receiving a user identification from a data transmission point associated with the asset ('760, figure 19, items 34 and 35; column 21, lines 10-21) and compares the user identification from the transmission point to the user identification stored in a remote database to confirm the identity of the user, as well as determine user qualification for handling a task ('760, figure 22; column 21, lines 16-32). An obvious task in light of the prior art would be the handling of kitchen appliances (i.e.[.] assets) ('430, abstract; '801, abstract; column 6; lines 38-63; column/line 12/24-13/20).

(Answer 16). We find that the Examiner has provided more than sufficient rational underpinning to support the obviousness rejection.

With respect to claims 12 and 20, the Appellants argue that the cited references do not teach “an analysis of user training or user certification with respect to a class of assets” (Br. 16). In the Brief, the Appellants argue in turn that Koether and Heagle do not teach this limitation, but do not address whether or not Mabuchi does. The Examiner found that

Mabuchi et al. teach a maintenance and inspection system that maintains worker files, including identification, authorization and certification data, in order to determine whether a worker is allowed to operate equipment (figures 6, 8, 19, 23-26, and 40; column, 18, lines 1-6; column 21, lines 20-53; column 30, lines 47-64; column 33, lines 14-39; column 38, lines 33-46)[.] Therefore, it would have been obvious to one of ordinary skill to

combine the systems of Koether, Heagle et al., and Mabuchi et al. in order to maintain a clean and efficiently operating environment where food is prepared and/or distributed, through the implementation of employee specific requirements for ensuring adherence to operational standards, such as HACCP guidelines ('801, column 8, lines 30-67; column/line 12/24-13/20; column 16, lines 11-40).

(Answer 9). The Appellants respond by arguing that Mabuchi clearly is directed toward managing the access of various individuals to various locations within a business, such as a kitchen. According to the Appellants, the restricted work areas disclosed in Mabuchi are clearly different than the recited "class of assets" in that the work areas disclosed by Mabuchi are locations rather than physical assets (Reply Br. 10-11). The Appellants appear to be arguing the references separately, rather than addressing the combination put forth by the Examiner. The Appellants have not shown that the Examiner erred in rejecting claims 12 and 20.

With respect to claims 13 and 15, Appellants argue that the cited references do not teach an "authorization subsystem including an asset access mechanism to receive said user identification from a data transmission point associated with the asset." The Examiner found that Mabuchi teaches an asset access mechanism for receiving a user identification from a data transmission point associated with the asset (Answer 16, citing Mabuchi, Figure 19, items 34 and 35; col. 21, ll. 10-21). The Examiner also found that the claim language is broad as it merely refers to a data transmission point associated with an asset. According to the Examiner, any data transmission point that is linked to an asset, such as by location, user, network, company, or manufacturer reads on the disputed

limitation. The Examiner further found that Mabuchi also teaches a system for controlling user access to sensitive work areas wherein these areas utilize various equipment (Answer 17, citing Mabuchi, Figures 19, 22-24, and 26; col. 1, ll. 5-27). The Appellants argue that there is no teaching or suggestion to combine the references, which we addressed above, and that the Final Office Action failed to make any citation to an authorization subsystem that include an asset access mechanism. The Appellants do not contest the Examiner's above findings made in the Answer. The Appellants have failed to show that the Examiner erred in rejecting claims 13 and 15, and claim 14, which was not argued separately from claim 13.

With respect to claims 13 and 19, the Appellants argue that the cited references fail to teach a comparison of user identification. The Examiner found that Mabuchi teaches reading an authorization subsystem and asset controller as well as receiving user identification, transmitting the identification to an asset controller, and providing selective access authorization based on additional user data stored in said asset controller for a particular user identification. The Examiner notes that claim 19 does not recite access to the device merely access authorization. (Answer 17, citing Mabuchi, Figures 19 and 22-24; col. 21, ll. 10-22). We agree with the Examiner. The Appellants have failed to show that the Examiner erred in rejecting claims 13 and 19.

CONCLUSIONS

We conclude that the Appellants have not shown that the Examiner erred in finding that Koether teaches generating a preventative maintenance determination from said acquired data and at least one historical

characteristic relating to said asset. We conclude that the Appellants have shown that the Examiner erred in concluding that Koether teaches (1) a hand held device that is in direct contact with an analysis controller; (2) a second computer system disposed between said analysis controller and said hand held device; (3) a data base that includes a best practice level or past historical data to provide a base point for comparison with said collected data; (4) user data representing a user accessing an asset; (5) a hand held device including a form, said form providing at least a subset of said data values for the entry of foundational data; and (6) forms providing data values for the entry of foundational data associated with said data values, said data values and said foundational data being transmitted to said analysis controller.

We conclude that the Appellants have not shown that the Examiner erred in finding that it would have been obvious to combine Koether, Heagle, and Mabuchi as proposed, and in finding that the combination teaches (1) an analysis of user training or user certification with respect to a class of assets; (2) an authorization subsystem including an asset access mechanism to receive said user identification from a data transmission point associated with the asset; and (3) a comparison of user identification.

DECISION

The decision of the Examiner to reject claims 1, 7, 8, 18, and 21-24 under 35 U.S.C. § 102(e) is affirmed. The decision of the Examiner to reject claims 2-6, 9-11, and 16-17 under 35 U.S.C. § 102(e) is reversed. The decision of the Examiner to reject claim 12-15, 19-20, and 25 under 35 U.S.C. § 103(a) is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART

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